

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0368
INTERNATIONAL REGISTRATION PLAN
For The Tax Period 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. International Registration Plan Fees - Imposition.

Authority: IC § 6-6-4.1-14; IC § 9-28-4-6; IC § 6-8.1-5-1(b); IC § 6-8.1-5-4(a).

The Taxpayer protests the imposition of International Registration Plan fees.

II. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-6-4.1-23; 45 IAC 15-11-2(b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation primarily engaged in farming. The Taxpayer also operates an ancillary trucking business. After an audit, Indiana Department of Revenue (Department) assessed International Registration Plan fees, interest, and penalty against the Taxpayer. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. International Registration Plan Fees -Imposition.

DISCUSSION

The International Registration Plan (IRP) is an agreement between various United States jurisdictions and Canada allowing for the proportional registration of commercial vehicles and providing for the recognition of such registrations in the participating jurisdictions. The agreement's goal is to promote the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority granted under IC § 6-6-4.1-14 and IC § 9-28-4-6.

All assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

The Taxpayer did not maintain accurate trip reports. Specifically, the Taxpayer's records did not indicate the trip origins and destinations by city and state, total trip miles, and mileage by jurisdiction. Without these records, the Department was unable to determine the percentage of the miles that the Taxpayer's trucks were driven in Indiana as opposed to miles driven in other states. Therefore, the Department considered the trucks to have been driven only in Indiana. The Department imposed IRP fees based on the presumption that all of the trucks in the Taxpayer's fleet were driven only in Indiana. The Taxpayer was unable to sustain its burden of proving that this method of determining the IRP fees resulted in an incorrect conclusion.

FINDING

The Taxpayer's protest is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1 and IC § 6-6-4.1-23. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must

demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed use tax was due to reasonable cause rather than negligence.

FINDING

The Taxpayer's protest to the imposition of the penalty is sustained.